

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

MASIMO CORPORATION and
CERCACOR LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.

Counter-Defendant.

C.A. No. 22-1378-MN-JLH

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION CHART FOR ASSERTED MASIMO PATENTS

The parties have met and conferred pursuant to Paragraph 11 of the Scheduling Order (D.I. 92), and present the following Joint Claim Construction Chart (attached as Exhibit A), which sets forth the disputed claims/terms from U.S. Patent Nos.: 10,687,743; 10,722,159; 8,190,223; 10,736,507; and 10,984,911 (collectively, the “Asserted Masimo Patents”).

The attached Joint Claim Construction Chart (Exhibit A) identifies the disputed claims, terms, and phrases of the Asserted Masimo Patents, and provides each party’s proposed constructions of those claims, terms, and phrases as well as the intrinsic evidence supporting each party’s respective proposed constructions. Pursuant to Paragraph 11 of the Scheduling Order, copies of the Asserted Masimo Patents as well as the portions of the intrinsic record relied upon by Masimo are attached as Exhibit B, and the portions of the intrinsic record relied upon by Apple are attached as Exhibit C. The parties have made a good faith effort to include all known support in the intrinsic record for their respective proposed constructions, but reserve their rights to supplement the Joint Claim Construction Chart with additional evidence and to rely upon additional evidence in their claim construction briefs.

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Dated: July 13, 2023

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Dated: July 13, 2023

Exhibit A

Joint Claim Construction Chart for Asserted Masimo Patents

I. Asserted Masimo Patents

The following chart identifies the claims at issue from U.S. Patent Nos. 10,687,743 (the “‘743 Patent”), 10,722,159 (the “‘159 Patent”), 8,190,223 (the “‘223 Patent”), 10,736,507 (the “‘507 Patent”), and 10,984,911 (the “‘911 Patent”) (collectively, the “Asserted Masimo Patents”¹), as well as each party’s proposed constructions and citations to intrinsic evidence in support of such constructions.²

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo’s Proposed Constructions & Intrinsic Evidence	Apple’s Proposed Constructions & Intrinsic Evidence
M-1	’223	blood parameter (claims 27, 28, 34, 36, 43)	Plain and ordinary meaning <u>Intrinsic Evidence:</u> ’223 Patent Specification: FIGS. 1-11, Abstract, 2:16-35, 2:51-3:28, 4:66-5:25, 11:51-12:8, 14:39-50, 15:39-67, 16:35-44, 16:59-17:2, 17:16-21, 18:1-18, 19:40-55.	concentration of a constituent in blood <u>Intrinsic Evidence:</u> ’223 Patent, including abstract; Figs. 4-6, 9-11H; 2:51-3:9, 5:59-6:8, 8:14-37, 18:1-18, 22:61-64, claims 1, 5-10, 15, 21, 23-26, 39, 43. U.S. Patent 8,190,223 File History, including at: • Oct. 23, 2012 Order Granting Request for Ex Parte Reexamination, including at 1-8, 6-7.

¹ Pursuant to D.I. 25 (in the -1378 matter), Masimo’s counterclaims asserting five additional patents (U.S. Patent Nos. 10,912,501; 10,912,502; 10,945,648; 10,687,745; 7,761,127) are stayed pending the resolution of an International Trade Commission Matter.

² Each party reserves the right to rely upon the portions of the intrinsic record cited by the other party, and to rely upon additional intrinsic evidence in the claim constructions briefs to respond to or rebut evidence and arguments made by the other party. Moreover, the parties’ citations to the specification or file history of certain patents are exemplary for like citations within the specifications and file histories of the asserted patents. Additionally, the parties rely generally on the specifications and file histories of the asserted patents, including but not limited to the specific citations identified herein. While each row in this Joint Claim Construction Chart corresponds to a disputed claim, term, or phrase, the parties may group together certain disputes in their claim construction briefs.

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				<ul style="list-style-type: none"> Dec. 3, 2012 Non-Final Rejection during Ex Parte Reexamination, including at 2-4. <p>U.S. Patent No. 7,764,982 (incorporated by reference by U.S. Patent No. 8,190,223), including at 2:39-46, 4:35-49.</p> <p>U.S. Patent No. 7,027,849 (incorporated by reference by U.S. Patent No. 7,764,982, which is incorporated by reference by U.S. Patent No. 8,190,223; included in the References Cited for U.S. Patent No. 8,190,223), including at 3:34-50.</p> <p>U.S. Patent Application Publication 2002/0082488 (relied on in Ex Parte Reexamination of U.S. Patent No. 8,190,223), including at Figs. 16A, 16B; ¶¶ 0038, 0094-0095.</p> <p>EP 2 305 104 (included in the References Cited for U.S. Patent No. 8,190,223), including at [0003] and [0008].</p> <p>WO 2006/094168 (included in the References Cited for U.S. Patent No. 8,190,223), including at [0035].</p>
M-2	'223	measured value (claims 15, 21, 27, 28, 36, 43)	Plain and ordinary meaning <u>Intrinsic Evidence:</u> '223 Patent Specification: FIGS. 2-10, 11A-H, Abstract, 2:51-3:28, 7:7-28, 10:4-48, 12:66-13:28, 13:64-14:15, 14:20-16:27, 16:45-17:16, 17:33-41, 18:1-22, 19:40-55.	actual numeric value of a measurement <u>Intrinsic Evidence:</u> U.S. Patent 8,190,223, including at Figs. 2-6, 8-10, 11A-11H; 3:10-28, 4:15-25, 4:30-38, 8:14-37, 10:4-48, 11:12-50, 12:66-14:15, 14:20-18:55. U.S. Patent 8,190,223 File History, including at:

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				<ul style="list-style-type: none"> Oct. 23, 2012 Order Granting Request for Ex Parte Reexamination, including at 1-8, 6-7. Dec. 3, 2012 Non-Final Rejection during Ex Parte Reexamination, including at 2-4. <p>U.S. Patent Application Publication 2002/0082488 (relied on in Ex Parte Reexamination of U.S. Patent No. 8,190,223), including at Figs. 16A, 16B; ¶¶ 0094-0095.</p>
M-3	'223	generally capable of displaying (claim 21)	<p>Not Indefinite; Plain and ordinary meaning; Preamble is not limiting</p> <p><u>Intrinsic Evidence:</u> '223 Patent Claims: 27, 42, 43, 44.</p> <p>'223 Patent Specification: FIGS 1-3, 7, 8, 11, Abstract, 2:51-3:9, 4:9-12, 4:26-29, 4:57-5:5, 5:31-44, 8:14-37, 10:4-26, 10:27-48, 14:20-38, 15:39-67, 16:35-44, 17:16-32.</p>	<p>Indefinite</p> <p><u>Intrinsic Evidence:</u> U.S. Patent No. 8,190,223, including at claim 21.</p>
M-4	'507	mobile measurement (claim 13)	<p>Preamble is not limiting; Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u> '507 Patent Specification: FIGS. 1A-1C, 2, 3, 4A-4D, 6-10, Title, Abstract, 1:7-14, 1:20-24, 2:14-3:5, 3:30-35; 3:39-40, 3:45-46, 3:54-4:45, 4:65-5:58, 6:1-37, 7:3-17, 7:37-8:2, 10:23-58, 12:6-38, 13:10-27, 15:10-37, 16:16-18:47, 19:61-20:13.</p>	<p>Preamble is limiting; measurement during motion</p> <p><u>Intrinsic Evidence:</u> U.S. Patent No. 10,736,507, including at Figs. 3, 6, 7; 1:62-2:10, 2:14-20, 2:41-57, 6:1-22, 9:48-65, 10:55-12:2, 15:19-28, 15:2-9, 15:52-16:37; claims 1, 13.</p>

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
M-5	'507	one or more signals (claim 13)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u> '507 Patent Specification: Abstract, 4:46-5:14, 9:21-46, 17:60-18:7, 19:61-20:13.</p>	<p>raw detected signal(s)</p> <p><u>Intrinsic Evidence:</u> U.S. Patent No. 10,736,507, including at Figs. 1A-C, 2, 5A-C; 4:46-59, 5:40-58, 6:1-23, 6:23-7:17, 9:47-65, 10:23-34, 10:35-38, 10:55-11:53, 16:62-17:6, 17:22-32; claims 1, 13.</p> <p>U.S. Patent No. 9,877,650 File History, including at:</p> <ul style="list-style-type: none"> • Aug. 13, 2015 Office Action, including at 5-13 • Feb. 12, 2016 Response to Office Action, including at 9-22 • Mar. 29, 2016 Office Action, including at 2-11 • Aug. 29, 2016 Response to Office Action, including at 7-10 • Sept. 16, 2016 Office Action, including at 4-14 • Mar. 15, 2017 Response to Office Action, including at 6-11 • Apr. 19, 2017 Office Action, including at 4-14 • June 16, 2017 Response to Office Action, including at 6-12 • The portions of Lisogurski (U.S. Patent App. No. 2011 / 077473), Al-Ali (U.S. Patent App. No. 2008 /0071153), Telfort (U.S. Patent App. No. 2010 /

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				0198094), and Otto (U.S. Patent App. No. 2008 / 0211657) cited therein.
M-6	'507	the processing board in data communication with the optical sensor and a mobile computing device including a display (claim 13)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u> '507 Patent Specification: FIGS. 1A-1C, 2, Abstract, 2:21-46, 7:26-62, 8:3-17.</p>	<p>the processing board communicates data with—rather than is a part of—the optical sensor and a mobile computing device including a display</p> <p><u>Intrinsic Evidence:</u> U.S. Patent No. 10,736,507, including at Figs. 1A-C, 2, 3, 5A-C, 8, 9; 2:14-46, 3:57- 4:8, 4:67-5:4, 6:1-22, 7:3-8:2, 9:47-65, 10:55-11:6; claims 1, 13.</p> <p>'507 Patent File History, including at:</p> <ul style="list-style-type: none"> • May 31, 2019 Office Action, including at 2-12 • Sept. 30, 2019 Response to Office Action, including at 7-9 • The portions of Lisogurski (U.S. Patent App. No. 2011 /0077473), Lamego (U.S. Patent App. No. 2012 /0226117), and Banet (U.S. Patent App. No. 2010/ 0160798) cited therein. <p>U.S. Patent No. 9,877,650 File History, including at:</p> <ul style="list-style-type: none"> • Aug. 13, 2015 Office Action, including at 5-13 • Feb. 12, 2016 Response to Office Action, including at 9-11 • Mar. 29, 2016 Office Action, including at 2-11 • Aug. 29, 2016 Response to Office Action,

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				<p>including at 7-10</p> <ul style="list-style-type: none"> • Sept. 16, 2016 Office Action, including at 4-14 • Mar. 15, 2017 Response to Office Action, including at 6-11 • Apr. 19, 2017 Office Action, including at 4-14 • June 16, 2017 Response to Office Action, including at 6-12 • The portions of Lisogurski (U.S. Patent App. No. 2011 / 077473), Al-Ali (U.S. Patent App. No. 2008 /0071153), Telfort (U.S. Patent App. No. 2010 / 0198094), and Otto (U.S. Patent App. No. 2008 / 0211657) cited therein.
M-7	'507	via a processing board... receiving... processing... outputting... (claim 13)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u> '507 Patent Specification: FIGS. 2, 8, 2:21-46, 10:24-36, 10:55-12:2, 16:43-54, 16:62-17:6, 18:57-20:13.</p>	<p>the same processing board performs the receiving, processing, and outputting steps</p> <p><u>Intrinsic Evidence:</u> U.S. Patent No. 10,736,507, including at Figs. 1A-C, 2, 3, 5A-C, 8, 9; 2:14-46, 3:57- 4:8, 4:67-5:4, 6:1-22, 7:3-8:2, 9:47-65, 10:55-11:6; claim 13.</p> <p>U.S. Patent No. 9,877,650 File History, including at:</p> <ul style="list-style-type: none"> • Aug. 13, 2015 Office Action, including at 5-13 • Feb. 12, 2016 Response to Office Action, including at 9-11

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				<ul style="list-style-type: none"> • Mar. 29, 2016 Office Action, including at 2-11 • Aug. 29, 2016 Response to Office Action, including at 7-10 • Sept. 16, 2016 Office Action, including at 4-14 • Mar. 15, 2017 Response to Office Action, including at 6-11 • Apr. 19, 2017 Office Action, including at 4-14 • June 16, 2017 Response to Office Action, including at 6-12 • The portions of Lisogurski (U.S. Patent App. No. 2011 / 077473) Al-Ali (U.S. Patent App. No. 2008 /0071153), Telfort (U.S. Patent App. No. 2010 / 0198094), and Otto (U.S. Patent App. No. 2008 / 0211657) cited therein.
M-8	'507	via an application... generating... displaying... displaying... (claim 13) / via the application (claims 14, 16, 17, 20)	Plain and ordinary meaning <u>Intrinsic Evidence:</u> '507 Patent Specification: FIGS. 4A-4D, 2:21-46, 3:36-38, 5:14-58, 6:38-57, 10:35-54, 13:8-14:37, 18:57-19:17, 19:44-20:13.	the same application performs the generating, displaying, and displaying steps / via the same application that performs the generating, displaying, and displaying steps of claim 13 <u>Intrinsic Evidence:</u> U.S. Patent No. 10,736,507, including at Figs. 4A-D, 7-10; 5:25-58, 13:22-63, 14:3-37; claims 13, 14, 16, 17, 20.

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
				<p>'507 Patent File History, including at:</p> <ul style="list-style-type: none"> • May 31, 2019 Office Action, including at 2-12 • Sept. 30, 2019 Response to Office Action, including at 7-9 • The portions of Lisogurski (U.S. Patent App. No. 2011 /0077473), Lamego (U.S. Patent App. No. 2012 /0226117), and Banet (U.S. Patent App. No. 2010/ 0160798) cited therein.
M-9	'911	cavity (claims 1, 10)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u></p> <p>'911 Patent Claims: 1, 10.</p> <p>'911 Patent Specification: FIGS. 4, 29A-32H, 46, 4:39-49, 6:42-55, 14:49-15:23, 19:5-27.</p> <p>'911 Patent File History (App. No. 17/028,655): November 9, 2020 Office Action, March 3, 2021 Notice of Allowance.</p>	<p>a hollowed-out space within a solid body</p> <p><u>Intrinsic Evidence:</u></p> <p>U.S. Patent 10,984,911, including at Figs. 4, 6, 11A-11C, 13, 15-16, 21, 23, 29A-29B, 30A-30H, 31A-31H, 32A-32H, 33A-33H, 46; 4:39-52, 14:34-15:23, 19:5-27.</p> <p>U.S. Provisional 60/657,596, including at Figs. 15A-15C, 15E, 15F, 15H; ¶ 0053.</p> <p>U.S. Patent 8,781,544 (incorporated by reference by U.S. Patent 10,984,911), including at Figs. 15A-15B; 10:51-11:5.</p>
M-10	'911	a light block [at least partially] surrounding the at least one detector (claims 1, 10, 19)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u></p> <p>'911 Patent Claims: 1, 10, 19.</p> <p>'911 Patent Specification: FIGS. 4, 29A-32H, 46,</p>	<p>a structure that blocks light and accommodates the detector assembly</p> <p><u>Intrinsic Evidence:</u></p> <p>U.S. Patent 10,984,911, including at Figs. 3, 4, 9, 10A-</p>

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
			<p>4:39-49, 6:42-55, 14:49-15:23, 19:5-27.</p> <p>'911 Patent File History (App. No. 17/028,655): November 9, 2020 Office Action, February 9, 2021 Office Action Response, March 3, 2021 Notice of Allowance.</p> <p>File History of U.S. Patent No. 11,545,263: July 28, 2022 Office Action Response.</p>	<p>10D, 19, 20, 21, 24-26, 29A-29B, 31A-H, 32A-H, 34A-34H, 40, 46; 6:4-24, 6:42-51, 9:2-10, 9:34-64, 12:4-58, 13:63-14:15, 14:34-52, 15:4-23, 19:5-27, claim 21.</p> <p>U.S. Patent 10,984,911 File History, including at:</p> <ul style="list-style-type: none"> • Nov. 9, 2020 Office Action, including at 2-3 <p>U.S. Patent 6,580,086 (Schulz) (cited in 11/9/2020 Office Action), including at Fig. 5; 10:32-50.</p>
M-11	'911	a top of the [shoebox structure / light block] (claims 1, 19)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u></p> <p>'911 Patent Claims: 1, 19.</p> <p>'911 Patent Specification: FIGS. 4, 29A-32H, 46, 4:39-49, 6:42-55, 14:49-15:23, 19:5-27.</p> <p>'911 Patent File History (App. No. 17/028,655): November 9, 2020 Office Action, February 9, 2021 Office Action Response, March 3, 2021 Notice of Allowance.</p> <p>File History of U.S. Patent No. 11,545,263 (App. No. 17/224,833): July 28, 2022 Office Action Response.</p>	<p>the uppermost structure that covers the [shoebox structure / light block]</p> <p><u>Intrinsic Evidence:</u></p> <p>U.S. Patent 10,984,911, including at Figs. 4, 24, 29A-29B, 31A-31H, 32A-32H, 34A-34H, 46; 4:47-49, 6:25-55, 14:34-52, 15:4-23, 19:5-27.</p> <p>U.S. Patent 10,984,911 File History, including at:</p> <ul style="list-style-type: none"> • Nov. 9, 2020 Office Action, including at 2-3 • Feb. 9, 2021 Claim Amendments, including at Claim 21 (which became Claim 1) and Claim 39 (which became Claim 19) • Feb. 17, 2021 Examiner Interview Summary • Mar. 3, 2021 Notice of Allowance, including at 2-3. <p>U.S. Patent 6,580,086 (Schulz) (cited in 11/9/2020 Office Action), including at Fig. 5; 10:32-50.</p>

Joint Claim Construction Chart for Asserted Masimo Patents

Asserted Masimo Patents				
No.	Patent(s)	Term	Masimo's Proposed Constructions & Intrinsic Evidence	Apple's Proposed Constructions & Intrinsic Evidence
M-12	'911	opening (claims 1, 19, 20)	<p>Plain and ordinary meaning</p> <p><u>Intrinsic Evidence:</u></p> <p>'911 Patent Claims: 1, 19, 20.</p> <p>'911 Patent Specification: FIGS. 4, 29A-32H, 46, 4:39-49, 6:42-55, 14:49-15:23, 19:5-27.</p> <p>'911 Patent File History (App. No. 17/028,655): February 9, 2021 Office Action Response, March 3, 2021 Notice of Allowance.</p>	<p>empty space</p> <p><u>Intrinsic Evidence:</u></p> <p>U.S. Patent 10,984,911, including at Figs. 4, 24, 29B, 30A-30C, 30F, 31A-31C, 31E, 32B-32C, 32H, 46; 13:38-53, 14:34-15:23, 19:5-17, claims 8-10, 17, 18.</p> <p>U.S. Provisional 60/657,596, including at Figs. 15A, 16B; ¶¶ 0053, 0054.</p> <p>U.S. Patent 10,984,911 File History, including at:</p> <ul style="list-style-type: none"> • Nov. 9, 2020 Office Action, including at 2-3 • Feb. 9, 2021 Claim Amendments, including at Claim 21 (which became Claim 1) and Claim 39 (which became Claim 19) • Feb. 17, 2021 Examiner Interview Summary • Mar. 3, 2021 Notice of Allowance, including at 2-3. <p>U.S. Patent 6,580,086 (Schulz) (cited in 11/9/2020 Office Action), including at Fig. 5; 10:32-50.</p>

Joint Claim Construction Chart for Asserted Masimo Patents**II. Agreed Upon Constructions**

The following chart identifies the terms/phrases of Asserted Masimo Patents for which the parties have agreed upon a construction, as well as the parties' agreed construction for each such term/phrase.

Patent(s)	Term(s)	Agreed Upon Constructions
'743	shape an output light pattern (claims 1, 14)	change the shape (not just the size) of the light pattern that exits the optical transmission material from the shape of the light pattern received by it
'159	second shape (claims 1, 19)	shape different from the first shape (not just a change in size)